



JUL 27 2001

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In re Application of	:	
CARBONE, et al.	:	DECISION ON RENEWED
U.S. Application No.: 09/582,297	:	
PCT No.: PCT/US98/27268	:	PETITION UNDER
Int. Filing Date: 22 December 1998	:	
Priority Date: 24 December 1997	:	37 CFR 1.47(a)
Attorney Docket No.: 06975-029006	:	
For: ASYNCHRONOUS DATA PROTOCOL	:	

This decision is in response to applicant's "PETITION UNDER 37 CFR 1.47(a)" filed 12 February 2001 and status inquiry filed 14 May 2001.

### **BACKGROUND**

In a decision dated 12 December 2000, applicant's "Petition Under 37 CFR 1.47(a)" to accept the application without the signature of co-inventor Mr. Robert D. Greenlee was dismissed. Applicant was given a period of two months in which to respond and informed that no further petition fee was required.

On 12 February 2001, applicant filed the present "Petition Under 37 CFR 1.47(a)." accompanied by an affidavit of Mr. Jackie V. Gillispie.

### **DISCUSSION**

As detailed in the decision mailed 12 December 2000, a petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(I), (2) factual proof that the missing joint investor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor. Applicant previously satisfied items (1), (3) and (4).

Regarding item 2 above, MPEP 409.03(d) provides, in part:

Where inability to find or reach a non-signing inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a non-signing inventor is on vacation or out of town and is therefore

temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47. Such a petition will be dismissed as inappropriate.

The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the non-signing inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

The affidavit of Mr. Gillispie merely states that papers were mailed on two separate occasions. This is insufficient. Applicant has not detailed any of the efforts to reach Mr. Greenlee nor provided any documentary evidence showing that Mr. Greenlee could not be reached or found.

In light of the above, applicant's petition cannot be granted.

#### CONCLUSION

Applicant's petition under 37 CFR 1.47(a) is **DISMISSED**.

Applicants are hereby afforded TWO (2) MONTHS from the mail date of this decision to file either 1) an oath or declaration in compliance with 37 CFR 1.497 (a)-(b) signed by all inventors or 2) a renewed petition satisfying all requirements under 37 CFR 1.47(a). Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

As the requirements under 35 USC 371(c) have not been met, an official filing receipt will not be sent at this time.

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter directed to the attention of the PCT Legal Office.



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